

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION
Petitioner

v.

DESTINATION MATERNITY CORPORATION
Patent Owner

Case No. IPR2013-00532
(U.S. Patent No. RE43,531)

Dated: September 2, 2014

Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and
MITCHELL G. WEATHERLY *Administrative Patent Judges*.

**PATENT OWNER'S MOTION FOR ENTRY TO SEAL
UNDER 37 C.F.R. §42.54**

Pursuant to 37 C.F.R. § 42.14, Patent Owner Destination Maternity Corporation ("Patent Owner") hereby moves to seal the following: (1) Patent Owner's Motion for Observation Regarding Cross-Examination of Reply Witness; (2) Patent Owner's Motion to Exclude Evidence; and (3) the deposition transcript of Vincent A. Thomas (Ex. 2099) (collectively, the "Proposed Sealed Documents").¹ The Proposed Sealed Documents were filed contemporaneously with this Motion.

Pursuant to the Protective Order entered in this *Inter Partes* Review, Patent Owner is also filing partially redacted public versions of its Motion for Observation Regarding Cross-Examination of Reply Witness, Motion to Exclude Evidence, and the deposition transcript of Vincent A. Thomas. *See* Protective Order, ¶ 4 (Paper No. 25). Patent Owner is filing fully redacted versions of the deposition transcript of Vincent A. Thomas because the testimony contains proprietary confidential information.

Because the Proposed Sealed Documents contain proprietary confidential business information, Patent Owner moves to seal them for good cause explained in more detail below.

¹ Patent Owner requested permission to file this Motion on September 2, 2014, and informed the Board that Petitioner does not oppose the Motion.

I. Good Cause Exists for Sealing Confidential Information

The *Office Patent Trial Practice Guide* provides that "[t]he rules aim to strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, those "rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information." *Id.* (citing 37 C.F.R. § 42.54); *see also Illumina v. Columbia University*, IPR2013-00011, Paper 66, Aug. 12, 2013 Dec. (granting a motion to seal "technical and business information" and "product development information").

The Proposed Sealed Documents contain information that Patent Owner maintains is proprietary, sensitive, and confidential business, technical, financial, and/or strategy information further described below.

The Proposed Sealed Documents all relate to the sealed Declaration of Vincent A. Thomas (Ex. 1110), which contains Patent Owner confidential information. This document contains highly sensitive, confidential financial information related to Patent Owner's sales of maternity products. The document also relies on documents produced in the underlying litigation that were designated "Confidential" and "Highly Confidential -- Attorneys' Eyes Only" by

Patent Owner under the Protective Order entered by the U.S. District Court.

The Proposed Sealed Documents all include information related to the sealed Declaration of Vincent A. Thomas via a deposition transcript of Vincent A. Thomas (Ex. 2099) related to Mr. Thomas's declaration, Patent Owner's Motion for Observation Regarding Cross-Examination of Reply Witness Vincent A. Thomas, and Patent Owner's Motion to Exclude Evidence related to Vincent A. Thomas. These documents include highly sensitive, confidential financial information related to Patent Owner's sales of maternity products.

II. Certification of Non-Publication

On behalf of Patent Owner, undersigned counsel certifies the information sought to be sealed by this Motion to Seal has not, to their knowledge, been published or otherwise made public. Efforts to maintain the confidentiality of this information have been undertaken by Patent Owner and Petitioner in a related district court proceeding between the parties in the U.S. District Court for the Eastern District of Pennsylvania (CA. No. 2:12-cv05680 AB).

III. Conclusion

Accordingly, Patent Owner requests that its Motion for Observation Regarding Cross-Examination of Reply Witness, Motion to Exclude Evidence and deposition transcript of Vincent A. Thomas be sealed.

Date: September 2, 2014

DLA PIPER LLP (US)

s/ Paul A. Taufer

Paul A. Taufer (Reg. No. 35,703)
Michael L. Burns (Reg. No. 57,593)
DLA Piper LLP (US)
One Liberty Place
1650 Market Street, Suite 4900
Philadelphia, PA 19103
Phone: (215) 656-3385
Facsimile: (215) 606-3385
paul.taufer@dlapiper.com
michael.burns@dlapiper.com

Stuart Pollack (Reg. No. 43,862)
DLA Piper LLP (US)
1251 Avenue of the Americas
27th Floor
New York, NY 10020-1104
Phone: (212) 335-4964
Facsimile: (212) 884-
stuart.pollack@dlapiper.com

*Attorneys for Patent Owner, Destination
Maternity Corporation*

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.